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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,382	04/12/2001	Nancy D. Reyda	T-5910	3448

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EXAMINER

GARG, YOGESH C

ART UNIT PAPER NUMBER

3625

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,382

Applicant(s)

REYDA ET AL.

Examiner

Yogesh C Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11, 18-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11, 18-20 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment received on January 24, 2005 is acknowledged and received. Claims 1, 4, 11, 18 and 26 are amended. Claims 6-10, 12-17 and 21-25 are withdrawn. Currently claims 1-5, 11, 18-20 and 26 are pending for examination.

Response to Arguments

- 2.1. Since the applicant has amended independent claim 1, rejection of claims 1-3 and 5 under USC 101 is withdrawn.
- 2.2. Applicant has traversed Obviousness rejection of claims 1 over the prior art of Ojha stating (see Remarks filed on 1/24/2005, pages 7-8) that it is limited to buying and selling products and does not teach providing a plurality of services over the network. The examiner respectfully disagrees for the following reasons:

Ojha's prior art does teach providing a plurality of services including buying and selling of products online and providing information related to a plurality of products (see at least abstract, and col.2, line 45-col.3, line 5).

Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. The examiner has contended that the Ojha's art is analogous to the claimed invention because Ojha provides the system comprising a user's terminals 122, 124, 114, a communication network, such as Internet 106 and a server 102 and a client server architecture. The server 102 represents the claimed service bureau or headquarters which provides information/data via Internet in response to selections made by the users on the displayed list on user's terminals. Ojha discloses displaying a list of products and

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the users on their terminals select a product for purchasing it and this indication/selection of the product for purchasing is received by the server which in response takes further action in serving additional information for consummating the procurement/transaction for a product selected by the user (see previous office action, pages 7-8). *The applicant has not submitted any argument against this analogous contention from the examiner.*

The examiner acknowledged (see previous office action, page 8) that the Ojha's art does not disclose that the user's terminals 112, 114 and 122 belong to IR's and further that the lists of products displayed on the user's terminals comprises transaction services, communities services, brand deployment services, education support services, business operating services, and customer support services. But then examiner contended (see previous office action, page 8) that these differences relate to nonfunctional descriptive material and are not functionally involved in the steps or means for implementing the steps recited. The displaying step would be performed the same regardless of the data, if this data is related to a product as disclosed in Ojha or the data is related to a service, like transaction, community, etc. as claimed. Similarly, the user's terminal would perform the same regardless if the user is operating from home or an office environment as disclosed in Ojha or the user is an IR as claimed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to adapt and use the Ojha's invention wherein the users are IR, that is an individual retailer and to display any type of data, that is a list of products or services on the user's terminal to allow the user select one service to receive more information/response from the server which represents the IR's headquarters/service because the subjective interpretation of the user and data being displayed/selected on the

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terminal does not patentably distinguish the claimed invention. *The applicant has not submitted any argument against this analogous contention from the examiner.*

The applicant further argues with respect to claim 3, see Remarks, page 6, that Ojha does not teach real-time communication. The applicant's argument is a conclusive statement without pointing out any errors or deficiencies in the examiner's submission of the fact that Ojha's teachings of implementing interactive transactions via Internet are conducted in real-time (see col.4, lines 49-67 and Fig.10, " Market and buyer data including real-time demand curves, and product price histories"). For one of an ordinary skilled in the art, the real-time communication corresponds to computerized transaction-processing systems [see page 399 of Microsoft Computer Dictionary, third edition, 1997, Microsoft Press. This reference is for evidence only and not as a secondary reference.) and the Ojha's disclosure of conducting interactive transactions via Internet satisfies the Dictionary's meaning for real-time communication.

The applicant argues with respect to claims 5 and 20 that the limitations are not merely descriptive material but provide limitations as regards what services are displayed, received and served in steps a, b and c of claims 5 and 20. The examiner respectfully disagrees as the manipulative steps of the claims 5 and 20 are directed to the steps of displaying services, receiving messages and serving a transaction service. As regards to what services are displayed, received or served do not functionally affect the manipulative steps of displaying services, receiving messages and serving a transaction service. The displaying, receiving and serving steps would be performed the same regardless of the data, if this data is related to a product as disclosed in Ojha or the data is related to transaction services, inventory replenishment, pricing, etc. as claimed. Ojha does teach displaying a plurality of transaction services , see Fig.3 which shows the capability of conducting a negotiation for a transaction,

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and product search, Fig.4 which shows using existing shopping list to create a new one by typing an item name and clicking " New", and Fig.10 displays the transaction services for increasing revenues from existing customers, cost savings....." Market and buyer data including real-time demand curves, and product price histories", etc. and these services can be implemented for the users via communicating interactive messages via Internet.

In view of the foregoing, the Obviousness rejection of claims 1 and 18 and their dependencies over Ojha is sustainable. It is a Final rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 11, 18-20 and 26 are rejected under 35 U.S.C. 103 as being unpatentable over Reference Ojha (US Patent 6,598,026).

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

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and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3.1. Regarding claims 1-2, 4, 11, 18-19 and 26, Ojha, in the analogous field of implementing electronic commerce, discloses an apparatus capable of facilitating operations of a plurality of Independent Retailers ("IR"), said apparatus and the method steps comprising:

Communicating means for communicating over a network from a service bureau or a plurality of headquarters of chain of retail stores to their respective IR's, displaying means for displaying to said IR's a plurality of services for said IR's, for said IR's to select at least one service, wherein said services comprise procurement, receiving means to receive over said network a message from at least one of said IR's to its respective headquarters or a service bureau from said at least one store, and server means for serving up to said IR's said at least one selected service (see at least FIGs.1-6 and col.4, lines 49-67, "*Thus, the present invention provides methods and apparatus for facilitating a transaction between a buyer and one of a plurality of sellers via the Internet. Product information relating to a plurality of products meeting product criteria specified by the buyer is presented via the Internet. One of the plurality of sellers is associated with each of the products. A first bid from the buyer for a first one of the plurality of products is made available via the Internet to a first seller associated with the first product. A first bid response is presented via the Internet to the buyer. According to one embodiment, the first bid response is automatically presented according to response criteria specified by the first seller. Alternatively, the first bid response is presented according to a manually entered communication received from a representative of the first seller. Where the first bid response is an acceptance of the first bid, consummation of the transaction is facilitated. Where the first bid response is a counteroffer, further negotiation via the Internet between the buyer and the first seller is enabled*").

Note: Ojha's prior art (US Patent 6,598, 026) is analogous to claimed invention because it is reasonably pertinent to the particular problem with which the applicant was concerned, in

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order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Ojha provides the system comprising a user's terminals 122, 124, 114, a communication network, such as Internet 106 and a server 102 and a client server architecture. The server 102 represents the claimed service bureau or headquarters which provides information/data via Internet in response to selections made by the users on the displayed list on user's terminals. Ojha discloses displaying a list of products and the users on their terminals select a product for purchasing it and this indication/selection of the product for purchasing is received by the server which in response takes further action in serving additional information for consummating the procurement/transaction for a product selected by the user.

Reference Ojha does not expressly show that the user's terminals 112, 114 and 122 belong to IR's and further that that the lists of products displayed on the user's terminals comprises transaction services, communities services, brand deployment services, education support services, business operating services, and customer support services

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps or means for implementing the steps recited. The displaying step would be performed the same regardless of the data, if this data is related to a product as disclosed in Ojha or the data is related to a service, like transaction, community, etc. as claimed. Similarly, the user's terminal would perform the same regardless if the user is operating from home or an office environment as disclosed in Ojha or the user is an IR as claimed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to adapt and use the Ojha's invention wherein the users are IR, that is an individual retailer and to display any type of data, that is a list of products or services on the user's terminal to allow the user select one service to receive more information/response from the server which represents the IR's headquarters/service because the subjective interpretation of the user and data being displayed/selected on the terminal does not patentably distinguish the claimed invention.

3.2. Regarding claim 3, Ojha discloses a method of facilitating operations of independent retailers as disclosed and analyzed I claim 1 above. Ojha further discloses the steps of entering real-time communications between any of said IR's and a customer service representative of said service or a service bureau, and wherein said steps for communication can be entered into during any step of said method (see at least col.4, lines 61-67 which teaches a direct real-time communication between the seller's representative and the buyer. Also see FIG.10 which discloses providing real time data and information.).

3.3. Regarding claims 5 and 20, Ojha discloses a method and system for facilitating operations of a plurality of Independent Retailers including displaying a list of plurality of services for retailers to choose at least one of them as analyzed for claims 1 and 18 above. Further, the limitations recited in claims 5 and 20 represent nonfunctional descriptive material and are not functionally involved in the steps or means for implementing the steps recited (on the same basis as described for claims 1 and 18 above). The displaying, receiving and serving steps would be performed the same regardless of the data, if this data is related to a product as disclosed in Ojha or the data is related to transaction services, inventory replenishment, pricing,

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etc. as claimed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to adapt and use the Ojha's invention for displaying, receiving and serving data regardless, if this data is related to a product as disclosed in Ojha or it is related to transaction services, inventory replenishment, pricing, etc. as claimed in the instant application because the subjective interpretation of the data being displayed, received and served does not patentably distinguish the claimed invention.

Conclusion

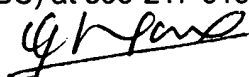
4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 571-272-6756. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
May 10, 2005